

ORDINANCE NO. 109

AN ORDINANCE OF THE CITY OF HOKAH, HOUSTON COUNTY, MINNESOTA,  
TO PROMOTE PUBLIC HEALTH, SAFETY, AND THE GENERAL WELFARE BY  
MINIMIZING LOSSES IN THE FLOOD HAZARD AREA OF THE CITY  
OCCASIONED BY PERIODIC FLOOD WATERS.

The City Council of the City of Hokah ordains:

SECTION 1.0 STATUTORY AUTHORIZATION , FINDING OF FACT AND  
PURPOSE.

1.1 Statutory Authorization. Legislature of the State of Minnesota has in Chapters 104 and 462, Minnesota General Statutes, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Hokah, Minnesota, ordains as follows:

1.2 Finding of Fact

1.21 The flood hazard areas of the City of Hokah, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare of the City.

1.22 Methods Used to Analyze Flood Hazards. This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

1.3 Statement of Purpose. It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by the provisions hereof.

SECTION 2.0 GENERAL PROVISIONS.

2.1 Lands to Which Ordinance Applies. This ordinance shall apply to all lands within the jurisdiction of the City of Hokah shown on the Official Zoning Map as being located within the boundaries of the Floodway and Flood Fringe Districts.

2.2 Establishment of Official Zoning Map. The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this ordinance. The attached material shall include the Flood Insurance Study for the City of Hokah prepared by the Federal Insurance Administration dated September 15, 1981, and the Flood Boundary and Floodway Maps and the March 15, 1982 Flood Insurance Rate Maps therein. The Official Zoning Map shall be on file in the Office of the City Clerk-Administrator.

2.3 Regulatory Flood Protection Elevation. The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.4 Interpretation.

2.41 In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

2.42 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Board of Adjustment shall make the necessary interpretation based on elevations on the regional (100 year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to said Board and to submit technical evidence. The Findings and any recommendation of the Board of Adjustment shall be transmitted to the City Council which shall make the final decision concerning any such disputes. The City Council may schedule additional public hearing(s). The permit applicant shall assume and pay all expenses incurred by the City in the permit application process and to this end the City Council, by resolution duly enacted, may establish a fee schedule designed to accomplish prepayment of such permit issuance related expenses as a jurisdictional prerequisite to initiate the process by which permits under this Ordinance are issued, or the prosecution of any appeal hereunder.

2.5 Compliance. No structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance.

2.6 Abrogation and Greater Restrictions. It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

2.7 Warning and Disclaimer of Liability. This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City of Hokah or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

2.8 Severability. If any section, clauses, provisions, or portion of this ordinance is adjudged unconstitutional or invalid by a Court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

2.9 Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Flood – a temporary increase in the flow or stage of a stream or in the stage of a lake that results in the inundation of normally dry areas.

Flood Frequency – the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood Fringe – that portion of the flood plain outside the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for the City of Hokah/

Flood Plain – the areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.

Flood-Proofing – a combination of structural provisions, changes or adjustments to properties and structures subject to flooding, primarily for the classification of buildings and structures (FP-1 through FP-4) shall be as defined in Section 210.0 of the 1972 Edition of “Flood Proofing Regulations,” as developed by the Office of the Chief of Engineers, U. S. Army, Washington, D.C.

Floodway – The channel of the watercourse. The floodway is the channel of a stream, plus any adjacent flood plain areas, that must be kept free of encroachment in order that the 100-year flood be carried without a substantial increase in flood heights.

Habitable Room – a space used for living, sleeping, eating or cooking, or combination thereof, but not including bathrooms, toilet compartments, closets, halls, storage rooms, laundry and utility rooms, cellars and similar spaces.

Obstruction – any dam, wall, wharf, embankment, levee, dike, pike, abutment, projection, excavation, channel modification, culver, building, wire fence, stockpile, refuse, fill, structure, or matter in, along across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself, or by catching or collecting debris carried by such water.

Reach – a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term “base flood” used in the Flood Insurance Study.

Structure – anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, detached garages, cabins, mobile homes, and other similar items. Earthen fills, embankments, and dikes are considered structures for purposes of this Ordinance.

**SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS.** The flood plain areas within the jurisdiction of this ordinance are hereby divided into two Districts: Floodway District (FW) and Flood Fringe District (FF).

3.1 Floodway District. The Floodway District shall include those areas designated as floodway in the Flood Insurance Study or as unnumbered “A” Zones on the Flood Insurance Rate Map, made a part hereof and incorporated herein by this reference as if set out hereat in full.

3.2 Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe in the flood Insurance Study.

The boundaries of these districts are shown on said Official Zoning Map. Within these districts all uses not allowed by Permitted Uses or permissible as Conditional Uses shall be prohibited.

#### SECTION 4.0 FLOODWAY DISTRICT (FW)

4.1 Permitted Uses. The following uses have a low flood damage potential and do not obstruct flood flows. These uses shall be permitted within the floodway District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill or storage of materials or equipment. In addition, no use shall adversely affect the capacity of the channels or floodways or any tributary to the main stream or of any drainage ditch, or any other drainage facility or system.

4.11 Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

4.12 Industrial-Commercial uses such as loading areas, parking areas, and airport landing strips.

4.13 Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4.14 Residential uses such as lawns, gardens, parking areas and play areas.

4.2 Conditional uses. The following open space uses require accessory structures (temporary or permanent), or fill or storage of materials or equipment. These uses may be permitted in the Floodway District only after the issuance of a Conditional Use Permit as provided in Section 9.4 of this Ordinance. These uses are also subject to the provisions of Section 4.3, which applies to all floodway Conditional Uses.

4.21 Structures accessory to open spaces uses.

4.22 Placement of fill.

4.23 Extraction of sand, gravel, and other materials.

4.24 Marinas, boat rentals, docks, piers, wharves, and water control structures.

4.25 Railroads, streets, bridges, utility transmission lines and pipelines.

4.26 Storage yards for equipment, machinery, or materials.

4.27 Other uses similar in nature to uses described in Sections 4.1 and 4.2 which are consistent with the provisions set out in Sections 1.3 and 4.0 of this Ordinance.

4.3 Standards for Floodway Conditional Uses.

4.31 All uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials, or equipment, or other uses may be allowed as a Conditional Use which, acting alone or in combination with existing or reasonably anticipated future uses, adversely affects the capacity of the floodway or increases flood heights. In addition, all floodway Conditional Uses shall be subject to the standards contained in Section 9.44 and the following standards (Sections 4.32 and 4.36).

4.32 Fill

(1) Any fill deposited in the floodway shall be no more than the minimum amount necessary to conduct a Conditional Use listed in Section 4.2. Generally, fill shall be limited to that needed to grade or landscape for that use and shall in no way obstruct the flow of flood waters.

(2) Spoil from dredging or sand and gravel operations shall not be deposited in the floodway unless it can be done in accordance with (1) of this Section.

(3) Fill shall be protected from erosion by vegetative cover.

4.33 Accessory Structures (temporary or permanent) permitted as Conditional Uses by Section 4.21.

(1) Accessory structures shall not be designed for human habitation.

(2) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters.

(a) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and

(b) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(3) Accessory structures shall be flood-proofed to the Regulatory Flood Protection Elevation in accordance with the standards contained in Section 9.45 of this ordinance.

4.34 Storage of Materials and Equipment

(1) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(2) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning.

4.35 Structural Works for Flood Control. Levees, dikes, and floodwalls shall not be constructed within the limits of the floodway District. Other structural works for flood control such as dams and channel enlargements that will change the courses, current, or cross-section of a public water shall be subject to the provisions of Chapter 105, Minnesota General Statutes.

#### **SECTION 5.0 FLOOD FRINGE DISTRICT (FF)**

5.1 Permitted Uses. The following uses shall be permitted uses within the Flood Fringe District to the extent that they are not prohibited by any other ordinance.

5.11 Any use permitted in Section 4.1

5.12 Accessory structures provided they comply with the provision of Section 4.33 of this Ordinance.

5.13 Residences and other structures constructed on fill so that the basement floor or first floor, if there is no basement, is at or above the Regulatory Flood Protection Elevation. The finished fill elevation shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and shall extend at such elevation at least fifteen (15) feet beyond the limits of any structure or building erected thereon. Fill shall be compacted and the slopes shall be protected by riprap or vegetative covering. Residences constructed on fill shall be subject to the vehicular access requirements in Section 5.31. No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.

5.2 Conditional Uses. Other uses are permitted only upon application to the Zoning Administrator and the issuance of a Conditional Use Permit as provided in Section 9.4 of this Ordinance and subject to the following provisions:

5.21 Residences. Where existing street, utilities, and small lot sized preclude the use of fill, other methods of elevating the first floor (including basements) above the Regulatory Flood Protection Elevation may be authorized, provided that the residence is flood-proofed in accordance with the standards contained in Section 9.45 of this Ordinance.

5.22 Non-Residential Structures. Commercial, manufacturing, and industrial structures shall ordinarily be elevated on fill so that their first floor (including basement) is above the Regulatory Flood Protection Elevation but may in special circumstances be flood-proofed in accordance with the provisions of this Ordinance. Structures that are not elevated to above the Regulatory Flood Protection Elevation shall be flood-proofed to FP-1 or FP-2 classification in accordance with the standards contained in Section 9.45 of this Ordinance. Structures flood-proofed to FP-3 or FP-4 classification shall not be permitted.

### 5.3 Standards for Flood Fringe Uses.

5.31 Residential Uses. Residences that do not have vehicular access at or above an elevation not more than two feet below the Regulatory Flood Protection Elevation shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance the Board shall specify limitations on the period of use or occupancy of the residence.

5.32 Commercial Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would inundate to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.

5.33 Manufacturing and Industrial Uses. Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 5.32 above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

**SECTION 6.0 SUBDIVISIONS.** No land shall be subdivided which is held unsuitable by the City Council for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation.

### **SECTION 7.0 PUBLIC UTILITIES, RAILROADS, ROADS AND BRIDGES.**

7.1 public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the standards contained in Section 9.45 of this ordinance or elevated to above the Regulatory Flood Protection Elevation.

7.2 Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the Floodway District shall comply with Section 4.31 and 4.32 of this Ordinance. Elevation to the Regulatory Flood protection Elevation shall be provided where failure or interruption of these transportation facilities will result in danger to the public health or safety or where such facilities are essential to the orderly functioning of

the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

#### SECTION 8.0 MOBILE HOMES AND MOBILE HOME PARKS.

8.1 New mobile home parks and expansions to existing mobile home parks shall be subject to the provisions placed on subdivisions by Section 6.0 of this ordinance.

8.2 Mobile homes in existing mobile home parks that are located in flood plain districts are nonconforming uses and may be replaced only if in compliance with the following conditions:

- (1) The mobile home lies in the flood Fringe District.
- (2) The mobile home is anchored with tie downs that comply with requirements of Minnesota Regulations MoH 450.
- (3) The mobile home owner or renter is notified that the mobile home site lies in the flood plain and may be subject to flooding.
- (4) The mobile home park owner develops a flood emergency plan consistent with the time available after a flood warning. The plan shall be filed with and approved by the City Council.

8.3 Individual mobile homes not located in mobile home parks may be permitted if allowed by other applicable ordinances and if they comply with the provisions of Section 5.13 of this Ordinance.

#### SECTION 9.0 ADMINISTRATION.

9.1 Zoning Administrator. The Zoning Administrator whose duties until the city Council by resolution duly enacted appoints one, shall be assumed and performed by the City Clerk-Administrator, designated by the City Council, shall administer and enforce this ordinance. If said Administrator finds a violation of the provisions of this Ordinance, he shall notify the person responsible for such violation, indicating the nature of the violation, and order the action necessary to correct it.

##### 9.2 Use Permit

9.21 use Permit Required. A Use permit issued by the Zoning Administrator in conformity with the provisions of this ordinance shall be secured prior to the erection, addition or alteration of any building, structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill or excavation of materials within the flood plain.

9.22 Application for use Permit. Application for a Use Permit shall be made in duplicate to the Zoning Administrator on forms furnished by the City and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

9.23 State and Federal Permits. Prior to granting a use Permit or processing an application for a Conditional use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.

9.24 Certificate of Zoning Compliance for a new, Altered, or Nonconforming use. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted,

altered or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance. Where a nonconforming use or structure is extended or substantially altered, the Certificate of Zoning Compliance shall specifically state the manner in which the nonconforming structure or use differs from the provisions of this Ordinance.

9.25 Construction and Use to be as Provided in Applications, Plans, Permits, and Certificate of Zoning Compliance. Use Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with the authorized shall be deemed violation of this Ordinance, and punishable as provided by Section 11.0 of this Ordinance. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.

9.26 Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the first floor (including basement) of all new structures or additions to existing structures in the flood plain districts and shall maintain in his office a record of the elevations to which structures or additions to structures are flood-proofed.

9.3 Board of Adjustment. A Board of Adjustment is hereby established:

9.31 Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State Law.

9.32 Administrative Review. The Board shall hear and make recommendations to the City Council concerning appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Ordinance.

9.33 Variances. The Board, upon appeal to it, shall make findings and recommendations to the City Council in specific cases concerning variances from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the provisions of the Ordinance will result in unnecessary hardship so that the spirit of the Ordinance shall be observed and substantial justice done. No Variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standard lower than those required by State Law.

9.34 Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall fix a reasonable time for a hearing and give due notice to the parties in interest. The Board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.



9.35 Decisions. The board shall make such findings and recommendations as it deems appropriate on such appeal or variance within thirty (30) days. In passing upon an appeal the Board may, so long as such action is in conformity with the provisions of this Ordinance, recommend, reverse or affirm them wholly or in part, or recommend modifying the order, requirement, decision or determination appealed from. It shall make findings and recommendations in writing setting forth the reasons therefore. In recommending the granting of a Variance, the board may prescribe appropriate conditions and safeguards such as those specified in Section 9.45 which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance punishable under Section 11.0. A copy of all decisions granting Variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action. After the lapse of thirty (30) days, or upon receipt of the Board of Adjustment's findings and recommendation, whichever occurs first, the City Council at its regular meeting, or at a duly convened special meeting, shall make final determination of the matter appealed from or under consideration, making written findings as the basis for its decision.

The appellant shall assume and pay all expenses incurred by the City in the appeal process and to this end the City Council, by resolution duly enacted, may establish a fee schedule designed to accomplish prepayment of such appeal related expenses as a jurisdictional prerequisite to initiate an appeal.

9.36 Appeals to the city Council and District Court. Appeals from any decision of the City Council may be taken by a person or persons, jointly or severally, aggrieved by such decision, or any taxpayer, officer, department, board or bureau of that municipality, to the District Court as provided by law and pursuant to Section 462.361, Minnesota General Statutes.

9.4 Conditional Uses. The City Planning Commission shall hear and make recommendations and findings thereon to the City Council concerning applications for Conditional Use Permits under this Ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration, and within thirty (30) days, or upon receipt of the findings and recommendations thereon, whichever occurs first, shall transmit the application with said findings and recommendations to the City Council.

9.41 Hearings. Upon filing with the Planning Commission of an application for a Conditional Use Permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of hearing.

9.42 Decisions. The city Council shall arrive at a decision on a Conditional Use within thirty (30) days. Failure to act within said time, unless the City Council by resolution duly enacted, extends the period for a consideration of such Conditional Use Permit, shall be deemed a denial thereof. In granting a Conditional use Permit the City Council may prescribe appropriate conditions and safeguards, in addition to those specified in Section 9.45, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of

this Ordinance punishable under Section 11.0. A copy of all decisions granting Conditional Use Permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

9.43 Procedures to be Followed by the Planning Commission on Considering Conditional Use Permit Applications Within All Flood Plain Districts.

(1) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Planning Commission for determining the suitability of the particular site for the proposed use:

- (a) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel,
- (b) Specifications for building construction and materials flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(2) Transmit one copy of the information described in subsection (1) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

(3) Based upon the technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

9.44. Factors Upon Which the Decision of the City Council Shall Be Based. In passing upon Conditional use Applications, the City Council shall consider all relevant factors specified in other sections of this Ordinance, and

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- (2) The danger that materials may be swept onto other lands or downstream to the injury of others.
- (3) The proposed water supply and sanitation systems, and the ability of those systems to prevent disease, contamination, and unsanitary conditions.
- (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (5) The importance of the services provided by the proposed facility to the community.
- (6) The requirements of the facility for a waterfront location.
- (7) The availability of alternative locations not subject to flooding for the proposed use.
- (8) the compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- (9) the relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at this site.
- (12) Such other factors which are relevant to the purposes of this Ordinance.

9.45 Conditions attached to Conditional Use Permits. Upon consideration of the factors listed above and the purposes of this Ordinance, the City Council may attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- (1) Modification of waste disposal and water supply facilities.
- (2) Limitations on period of use, occupancy, and operation.
- (3) Imposition of operational controls, sureties and deed restrictions.
- (4) Requirements for construction of channel modifications, dikes, levees, and other protective measures.
- (5) Flood proofing measures in accordance with Section 209 through 1406 of the 1972 Edition of "Flood Proofing Regulations" (FPR), as developed by the Office of the Chief of Engineers, U.S. Army, Washington, D.C., a copy of which is hereby incorporated by reference and declared to be a part of this ordinance. Where definition of terms as set forth in Section 301 of FPR conflict in meaning with the definition of terms set forth in this ordinance, the latter shall apply. The applicant shall be required to submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

#### 10.0 NONCONFORMING USES SECTION

10.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

10.11 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

10.12 No structural alteration or addition to any nonconforming structure over the life of the structure shall exceed 50 percent of its assessed value at the time of its becoming a nonconforming use, unless the entire structure is permanently changed to a conforming use or unless the alteration or addition would substantially reduce potential flood damages for the entire structure.

10.13 Any alteration or addition to a nonconforming use which would result in substantially increasing the flood damage potential of that use shall be flood-proofed in accordance with the standards contained in Section 9.45 of this Ordinance.

10.14 If any nonconforming use is discontinued for twelve consecutive months, any future use of the building premises shall conform to this Ordinance. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of twelve months.

10.15 If any nonconforming use is destroyed by any means, including floods, to an extent of fifty percent or more of its assessed value, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

10.16 Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

#### SECTION 11.0 PENALTIES FOR VIOLATION.

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of Variances or conditional Uses) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 or imprisoned for not more than 90 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the city of Hokah from taking such other lawful action as is necessary to prevent or remedy any violation, and the City may institute an action at law or in equity to abate, enjoin any violations of this Ordinance, any said violation thereof being deemed a public nuisance, and may likewise institute action to abate and enjoin any acts or omissions deemed contrary to the provisions of this Ordinance.

#### SECTION 12.0 AMENDMENTS.

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled (after securing appropriate permit hereunder) to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the commissioner of Natural Resources of he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this ordinance including amendments to the Official Zoning Map must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning map also require prior approval by the Federal Insurance Administrations.

#### SECTION 13.0 EFFECTIVE DATE.

This ordinance shall be effective upon its due passage and enactment, publication and approval (s) as required by law.

Passed and enacted this 2<sup>nd</sup> day of February, 1982

Approved:

Edward F. Lonkoski  
Mayor

Ernest Sloan  
City Clerk-Administrator

